

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 1253 to 1255 of 1997

with

Civil Applications No. 4289 to 4291 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ORIENTAL INSURANCE CO LTD

Versus

MAHMADHUSEN KHADIMHUSEN,DECD. THRO'HIS HEIRS & L.R.

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Appearance:

MR ARUN H MEHTA for appellants  
MR SHAKEEL A QURESHI for Respondent No.1 in FA  
No. 1253 and 1254 of 1997.  
MR DIVYESH SEJPAL for respondent No.1 in FA No.1255/97  
MR KS JHAVERI for Respondent No. 2 in all appeals  
NOTICE SERVED for Respondent No. 3 in all appeals

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.M.KAPADIA

Date of decision: 06/04/98

COMMON ORAL JUDGEMENT (Per A.M. Kapadia, J.)

Admit. Learned advocates Mr. Shakeel A. Qureshi and

Mr. Divyesh Sejpal waive service for original claimants.  
Mr. K.S. Jhaveri waives service for respondent No.2.

The present common judgment shall govern the disposal of the above mentioned three appeals jointly filed by the driver, owner and the insurer of the Truck No. GJ 4 T 5211, with the aids of the provisions of Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short hereinafter). At the request of the learned advocates for the parties, these three appeals have been taken up for final hearing.

On the fateful day, i.e., 9.1.1994 at about 6 P.M. seven persons boarded the truck No. GJ 4 T 5211 involved in the accident alongwith their goods in the capacity of caretakers of the goods. The said truck was proceeding on Bhavnagar-Talala Coastal Highway. When the truck reached near village Budhel, the driver of the said truck was driving the vehicle in a rash and negligent manner and at an excessive and uncontrollable speed. When the bus thus reached near the place of occurrence, one S.T. bus was going ahead of the said truck. Without getting clearance signal from the driver of the S.T. bus, the driver of the offending truck tried to overtake the bus. At that time many vehicles were coming from the opposite direction. In the process of overtaking the S.T. bus, the driver of the truck dashed the truck on the rear side of the S.T. bus and thus caused the ghastly accident which claimed the lives of three persons and severe bodily injuries to other four persons, who were sitting in the said truck alongwith their goods.

The heirs and legal representatives of three deceased persons filed MACP No. 56 of 1994, 63 of 1994 and 145 of 1994, claiming compensation under various heads, including the dependency benefits contending that the deceased were the sole bread-winner of their respective families. Four injured persons also filed claim petitions No. 278 of 1994 to 281 of 1994 claiming compensation under different heads including the heads of mental pain, shock and sufferings, for the injuries suffered by them, with which we are not concerned, as appeals have not been filed against the judgment and award in respect of the said four claim petitions.

The learned Tribunal, after hearing the parties and after considering the evidence adduced and produced before it, came to the conclusion that the driver of the truck was solely responsible for causing the accident and determined the compensation payable to the claimants of all the cases. The amount awarded as compensation to the

claimants with which we are concerned in this group of appeals, is as per the schedule shown hereinbelow:

MACP No. F.A.No. Amount Claimed Amount Awarded

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56/94 1253/97 Rs.5,50,000 Rs.4,04,000  
63/94 1254/97 Rs.3,00,000 Rs.1,20,000  
145/94 1255/97 Rs.4,00,000 Rs.2,50,000

In so far as the MACPs filed by the heirs and legal representatives of the deceased persons are concerned, the driver, owner and the insurer have brought in challenge the legality, validity and propriety of the judgment and award passed by the Tribunal which are impugned before us in these appeals.

In this group of appeals, the only question which calls for determination is as to whether the compensation awarded to the heirs and legal representatives of the deceased can be said to be just, reasonable, moderate and in consonance with the settled proposition of law or whether it is excessive and exorbitant which requires interference by this Court?

We have heard learned advocate Mr. Arun H. Mehta for the appellants/ opponents and learned advocates Mr. Qureshi and Mr. Sejpal for the claimants/ respondents.

Now we will deal with the said three appeals one by one to find out and ascertain whether the assessment of compensation and amount awarded by the Tribunal is excessive or can it be said to be just and reasonable.

F.A.No. 1253 of 1997 is filed challenging the judgment and award passed in MACP No. 56 of 1994 wherein as against the claim was for Rs.5,50,000 the Tribunal has awarded an amount of Rs.4,04,000. The MACP No.56 of 1994 was filed by the heirs and legal representatives of deceased Mahmadsusen Khadimsusen, who was aged 29 years at the relevant time and was doing business of 'pav bhaji' on a lorry just opposite Meghdoot Cinema in Mahuva Town. We have perused the judgment and evidence which have been supplied by the advocates during the course of hearing and on having a look at the same it could be seen that the Tribunal has considered the income of the deceased at Rs.3000 per month. Considering the business in which the deceased was engaged i.e., selling 'pav bhaji' in Mahuva Town, the income assessed by the Tribunal, according to us, is just and reasonable and any able bodied person engaged in such type of business of eatable items can definitely earn Rs.3000 per month. The

Tribunal also deducted 1/3 amount i.e., Rs.1000 for personal upkeepment of the deceased. Considering the dependency benefit of Rs.2000 per month the annual dependency benefit worked out to Rs.24,000 and by applying 16 years purchase factor looking to the age of the deceased which was 29 years at the relevant time, the amount of dependency benefit worked out to the figure of Rs.3,84,000/-. This amount can never be said to be unreasonable or unjust in the facts and circumstances of the case. Rs.20,000/- is added under the conventional amount and this made the total of Rs.4,04,000 which is awarded to the heirs and legal representatives of the deceased by way of compensation. Therefore, in our opinion, no interference is called for in this appeal and we confirm the judgment and award passed by the Tribunal. Therefore, F.A.No. 1253 of 1997, being devoid of any merits, is required to be dismissed.

First Appeal No. 1254 of 1997 is filed against the judgment and award passed in MACP No. 63 of 1994 in which the heirs and legal representatives of deceased Rafik Musabhai Sheikh are awarded an amount of Rs.1,20,000 by way of compensation against their claim of Rs.3,00,000. Rafik Musabhai Sheikh was aged about 25 years and at the relevant time he was working as cleaner in the ill-fated truck and was earning Rs.1500 per month. He was also getting Rs.25/- as daily allowance. The Tribunal considered the prospective income of the deceased at Rs.2500 which makes the yearly dependency benefit to Rs.30,000. The deceased was a bachelor. Therefore only 1/3 dependency would be available to the members of his family i.e., heirs and legal representatives of the deceased in view of the judgment rendered in the case of Rafia Sultan v. ONGC. Thus the Tribunal has considered Rs.10,000 as dependency benefit available to the heirs and legal representatives of the deceased towards the contribution to the common family fund. Considering the age of the dependents who are the parents in the age group of 45 - 38 at the relevant time, the Tribunal applied 10 years purchase factor and calculated the dependency benefit at Rs.1,00,000 and added Rs.20,000 under the head of loss of expectation of life. Thus the Tribunal awarded Rs.1,20,000 to the dependent parents. In our opinion, the amount awarded to the heirs and legal representatives of the deceased in this claim petition is also just and reasonable and no interference by this Court is called for and hence First Appeal No. 1254 of 1997 is also required to be dismissed being meritless.

First Appeal No. 145 of 1994 is preferred against the

judgment and award passed in MACP No. 145 of 1994 which was filed by the heirs and legal representatives of deceased Rajabhai Sejabhai Bharwad in which the claim was for Rs.4,00,000 and the amount awarded by the Tribunal is Rs.2,50,000. Deceased Rajabhai was age 54 years and he was doing agricultural work and was also selling milk. The Tribunal considered the monthly income of the deceased at Rs.2500 and yearly income is arrived at Rs.30,000 and after deducting 1/3 for personal upkeepment of the deceased himself, assessed the dependency benefit at Rs.20,000 per annum. The deceased was aged 54 years and the Tribunal adopted 9 multipliers and awarded Rs.1,80,000 by way of dependency benefits. Deceased Rajabhai was under treatment for one month after the accident and, therefore, Rs.50,000 was awarded to him by way of medical expenses and for mental pain, shock and sufferings so also for the major operations performed upon him. The Tribunal awarded Rs.20,000 under the head of loss of expectation of life. Thus, in all the Tribunal awarded Rs.2,50,000 by way of compensation to the heirs and legal representatives of the deceased by way of dependency benefits, which, according to us, is just and reasonable and hence First Appeal No. 1255 of 1997 also must fail being devoid of any merits.

In the net result, having regard to the facts and circumstances of the case, we are of the opinion that the Tribunal has awarded just and reasonable amount of compensation and, therefore, the same deserves our confirmation. Accordingly, we confirm the judgment and award passed by the Tribunal. In the premise, all the above mentioned three appeals are dismissed. There shall be no order as to costs.

In view of the above judgment and order, the Civil Applications stand disposed of accordingly. Notice is discharged.